

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ OCT 08 2008 ★

OMRI PERETZ,

Plaintiff,

-against-

THE HOME DEPOT INC., NORTHERN
TOOL & EQUIPMENT CO., EMERSON
ELECTRIC CO. d/b/a RIDGID,

Defendants.

PETITION FOR
REMOVAL

CV 08 4106
Civil Action No.

COGAN, J.
POHORELSKY, M.

TO THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK:

1. THE HOME DEPOT INC. and EMERSON ELECTRIC CO. are defendants in the litigation filed on or about September 8, 2008 in the Supreme Court of the State of New York, County of Kings, entitled "*Omri Peretz, plaintiff, against The Home Depot Inc., Northern Tool & Equipment Co., Emerson Electric Co. d/b/a Ridgid*", which bears Index number 25491/08. Pursuant to provisions of Section 1441 and 1446 of Title 28 of the United States Code, THE HOME DEPOT, INC., and EMERSON ELECTRIC CO. hereby remove this matter to the United States District Court for the Eastern District of New York, which is the judicial district in which the matter is pending.

2. The grounds for removal of this action are diversity of citizenship jurisdiction. Removal of this action from the Supreme Court of New York State, County of Kings to the United States District Court for the Eastern District of New York is, therefore, proper under Section 1441 (a) of Title 28 of the United States Code because this court would have had original

jurisdiction of the matter on the basis of diversity of citizenship pursuant to Section 1332 of Title 28, had the action originally been brought in this court.

3. Original jurisdiction on the basis of diversity of citizenship exists because:

- a. Upon information and belief, the plaintiff is an individual that is a citizen of the State of New York;
- b. Defendants, THE HOME DEPOT INC. is a corporation organized and incorporated under the laws of the State of Delaware, having its principal place of business in Atlanta, Georgia;
- c. Defendant, EMERSON ELECTRIC CO. is a corporation organized and incorporated under the laws of the State of Missouri, having its principal place of business in St. Louis, Missouri;
- d. Defendant, NORTHERN TOOL & EQUIPMENT CO., is a foreign non-New York corporation, the specific state of incorporation unknown at present, having its principal place of business in Burnsville, Minnesota.
- e. Upon information and belief, plaintiff seeks an amount in damages that exceeds \$75,000, exclusive of interest and costs, in this action.

4. Removal of this action is also proper under Section 1441 (b) of Title 28 of the United States Code because, as specified above, no party properly joined in this action as a defendant is a citizen of the State of New York.

5. This Petition for Removal is timely under Section 1446(b) of Title 28 of the United States Code as the Summons and Complaint in this matter was served on EMERSON ELECTRIC CO. on or about September 18, 2008 and upon HOME DEPOT, INC. via its agent on or about September 22, 2008. The date of service upon NORTHERN TOOL &

EQUIPMENT CO. is unknown. Therefore, this Petition for Removal is being filed within 30 days after the receipt of the Summons and Complaint by EMERSON ELECTRIC CO. and HOME DEPOT, INC.

6. All state-court papers served by the plaintiff on the defendants at the time of removal, consisting solely of the Summons and Complaint, are attached as Exhibit A. No state-court papers have been served by the defendants on the plaintiff at the time of removal.

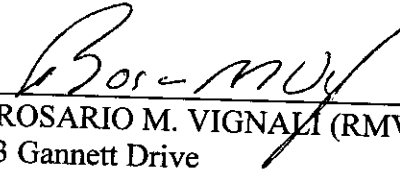
7. As evident in Exhibit B, Defendant, Northern Tool & Equipment, has consented to this removal. The original of this document will be filed with this court immediately upon receipt.

8. **WHEREFORE**, EMERSON ELECTRIC CO. and HOME DEPOT, INC. pray that the matter now pending against them in the Supreme Court of the State of New York, County of Kings, be removed to this Court.

Dated: White Plains, New York
October 7, 2008

Respectfully submitted,

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP

By: 
ROSARIO M. VIGNALI (RMV7150)
3 Gannett Drive
White Plains, New York 10604
Telephone: (914) 323-7000
Facsimile: (914) 323-7001
File No.: 10377.00004

ATTORNEYS FOR DEFENDANTS,
**THE HOME DEPOT, INC., and
EMERSON ELECTRIC CO.**

TO: **MICHAEL N. DAVID, ESQ.**
Attorneys for Plaintiff
82 Wall Street
New York, NY 10005
(212) 363-1997

NORTHERN TOOL & EQUIPMENT
2800 Southcross Drive West
Burnsville, MN 55306

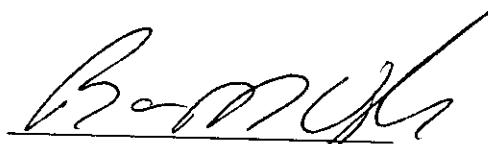
CERTIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

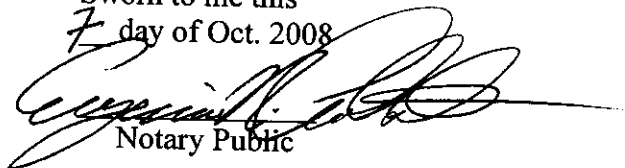
ROSARIO M. VIGNALI, being duly sworn according to law, deposes and says:

I am a member of the firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, attorneys for EMERSON ELECTRIC CO., and HOME DEPOT, INC., the within named defendants. I have read the foregoing Petition for Removal, and certify that the statements contained therein are true in substance and to my knowledge, information and belief, based on information in my file and based upon conversation and communications had with the defendants, except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.

This certification is made by me and not by the defendants because defendants do not reside within the county where I maintain my office.


Rosario M. Vignali

Sworn to me this
7 day of Oct. 2008


Notary Public

EUGENIA N. CARLISLE
NOTARY PUBLIC, State of New York
No. 01CA8014884
Qualified in Ulster County
Commission Expires October 19, 2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index # 25191/08
Filing Date:

-----X
OMRI PERETZ,

Plaintiff,

Plaintiff designates
Kings County as the
place of trial

-against-

The basis of venue is
defendant's residence

SUMMONS

Plaintiff resides at

THE HOME DEPOT INC., NORTHERN TOOL
+ EQUIPMENT CO., EMERSON ELECTRIC
CO. d/b/a RIDGID

Defendants.
-----X

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and serve a copy of your answer, or, if the complaint is not served with this summons, to serve a written notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: September 8, 2008

Defendant's Address:
THE HOME DEPOT Inc.

Michael N. David
Attorney for Plaintiff
82 Wall Street
New York, NY 10005
(212) 363-1997

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
OMRI PERETZ,

Plaintiff,

Index #
VERIFIED COMPLAINT

-against-

THE HOME DEPOT INC., NORTHERN TOOL
+ EQUIPMENT CO., EMERSON ELECTRIC
CO. d/b/a RIDGID

Defendants.
-----X

Plaintiff, by Michael N. David, his attorney,
complaining of the defendants herein, alleges and
respectfully shows to this Court, upon information and
belief:

AS AND FOR A FIRST CAUSE OF ACTION

1. That at all times hereinafter mentioned, the defendants, were and still are residents of the County of Kings and State of New York.
2. That upon information and belief, the defendant, THE HOME DEPOT INC., at all times hereinafter set forth, was and still is a domestic corporation duly licensed to do business in the State of New York.
3. That upon information and belief, the defendant, NORTHERN TOOL + EQUIPMENT CO., at all times hereinafter set forth, was and still is a foreign corporation duly licensed to do business in the State of New York.
4. That upon information and belief, the defendant, EMERSON ELECTRIC CO. d/b/a RIDGID, at all times hereinafter set forth, was and still is a foreign corporation duly licensed to do business in the State of New York.
5. That at all times hereinafter mentioned, the defendants, designed and/or distributed and/or manufactured

a Ridgid twist handle 7" angle grinder and 7" Norton blade, which they sold to the public.

6. That on or about July 20, 2008, at or about 5:00 p.m., while the plaintiff was lawfully and rightfully operating the aforesaid grinder and blade, the blade flew off the grinder striking plaintiff and causing the plaintiff to sustain severe and personal injuries.

7. That the aforesaid accident occurred solely through the fault, carelessness, recklessness and negligence of the defendants, their agents, servants and/or employees, without any fault or contributory negligence on the part of the plaintiffs herein.

8. The defendants were negligent in the design, distribution, manufacture, ownership, maintenance and control of the aforesaid grinder and blade.

9. This action falls within one or more of the exceptions set forth in C.P.L.R. 1602.

10. That as a result of the negligence of the defendants as aforesaid, the plaintiff, OMRI PERETZ, was caused to sustain great bodily injuries with accompanying pain, was rendered sick, sore, lame and disabled and some of the injuries may be permanent; suffered loss of enjoyment of life; was and may be prevented from attending his usual vocation; and was and may be compelled to expend monies and incur obligations for medical aid and attention in an endeavor to cure himself of his injuries.

11. That solely by reason of the above, the plaintiff, has sustained money damages in a sum which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION

12. The plaintiff repeats, re-alleges and reiterates each and every allegation contained in paragraphs marked "1 to 10" inclusive, with the same force and effect as if fully set forth herein.

13. That the defendants were negligent in the manufacture, design, testing, maintenance and distribution of the aforesaid grinder and blade.

14. That solely by reason of the above, the plaintiff, has sustained money damages in a sum which

exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION

15. The plaintiff repeats, re-alleges and reiterates each and every allegation contained in paragraphs marked "1 to 13" inclusive, with the same force and effect as if fully set forth herein.

16. That on or about July 20, 2008, the aforesaid grinder and blade were being used in a foreseeable manner and for the purpose and in the manner normally intended.

17. That the said occurrence was caused by no fault, want or lack of care on the part of the plaintiff but was caused by reason of the strict liability or breach of implied warranty of the defendant in failing to properly design, test, manufacture and distribute such aforesaid grinder and blade and for it to be and to remain in a dangerous, broken and defective condition.

18. That by the use and exercise of reasonable care, the user would not have discovered the defect and perceived the danger in the aforesaid grinder and blade.

19. That solely by reason of the above, the plaintiff, has sustained money damages in a sum which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION

20. The plaintiff repeats, re-alleges and reiterates each and every allegation contained in paragraphs marked "1 to 18" inclusive, with the same force and effect as if fully set forth herein.

21. That the defendant represented and warranted that the grinder and blade were safe and could be used for the purpose and in the manner normally intended.

22. That the aforesaid grinder and blade were not safe at the time of sale or thereafter; and that the warranties and representations were false, in that the aforesaid grinder and blade were dangerous and defective.

23. That solely by reason of the above, the plaintiff, has sustained money damages in a sum which

exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

WHEREFORE, the plaintiffs, demands judgment against the defendants in an amount to be determined upon trial of this action; together with interest from July 20, 2008, and with the costs and disbursements of the action.

Yours etc.,

MICHAEL N. DAVID
Attorney for Plaintiff
82 Wall Street
New York, NY 10005
(212) 363-1997

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, the undersigned, an attorney admitted to practice in the Courts of New York State, affirm that the following statements are true, under the penalties of perjury.

I am the attorney of record for the plaintiff in the within action. I have read the foregoing Complaint and know the contents thereof. The same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

The reason this verification is made by me and not by the plaintiff is that she does not reside in the county wherein deponent maintains his office...

The grounds of my belief as to all matters not stated upon my knowledge are as follows: records in deponent's possession as well as conversation with plaintiff.

Dated: New York, New York
September 8, 2008

Michael N. David

Index No.

Year

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

OMRI PERETZ

Plaintiffs,

-against-

THE HOME DEPOT INC., NORTHERN TOOL
+ EQUIPMENT CO., EMERSON ELECTRIC
CO. d/b/a RIDGID

Defendants.

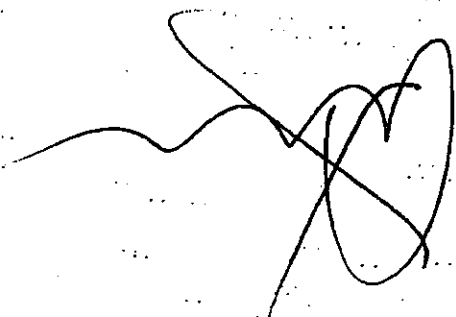
SUMMONS and VERIFIED COMPLAINT

MICHAEL N. DAVID
Attorney for Plaintiff
Office and Post Office Address, Telephone
82 Wall Street
New York, NY 10005
212-363-1997

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KINGS COUNTY CLERK
2008 SEP -8 PM 1:04

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A large, stylized handwritten signature in black ink, appearing to be a cursive representation of a name, possibly 'Michael N. David'.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

OMRI PERETZ,

Plaintiff,

-against-

AFFIDAVIT

THE HOME DEPOT INC., NORTHERN
TOOL & EQUIPMENT CO., EMERSON
ELECTRIC CO. d/b/a RIDGID,

Civil Action No. _____

Defendants.

James M. Fowler, Esq., being duly sworn, and aware of the penalties of perjury, states as follows:

1. I am an attorney duly admitted to practice law in the State of California. I was admitted to the California State Bar in 1992, and am admitted to practice law before the United States District Court for the Central District of California. I am a principal in the Fowler Law Group, which maintains offices at 10635 Santa Monica Boulevard, Los Angeles, California.
2. I am national coordinating counsel for Northern Tool & Equipment Company and, as such, I am authorized to make this affidavit.
3. Northern Tool & Equipment Company hereby consents to the removal of the matter entitled "*Omri Peretz, plaintiff, against The Home Depot Inc., Northern Tool & Equipment Co., Emerson Electric Co. d/b/a Ridgid*", which bears Index number 25491/08, from the Supreme Court of the State of New York, Kings County, to the United States District Court for the Eastern District of New York.

4. Northern Tool & Equipment otherwise makes no admissions or denials at this time to any and all of the allegations contained in the plaintiff's complaint in the above-referenced matter and hereby reserves its rights with respect thereof.

Dated: Los Angeles, California
October 7, 2008
7

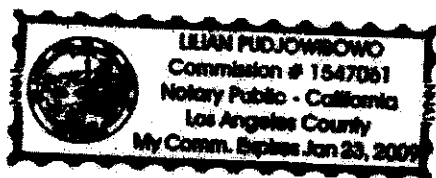
Respectfully submitted,

By: *James M. Fowler*
JAMES M. FOWLER, ESQ
FOLWER LAW GROUP
10635 Santa Monica Boulevard
Suite 305
Los Angeles, California 90025
Telephone: (310) 446-3900

See attached
Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los AngelesOn 10/7/08 before me, Lilian Pudjowibowo, Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared JAMES M. FOWLER
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature [Signature]

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached DocumentTitle or Type of Document: AffidavitDocument Date: 10/7/08Number of Pages: 2

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

 RIGHT THUMBPRINT
OF SIGNER
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Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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OF SIGNER
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